IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.32 of 2001

Decided on : November 1, 2006

United India Insurance Company .....Appellant.

VERSUS

Smt. Asha Verma and others .....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashwani Sharma, Advocate.

For the Respondents : Mr. Raman Sethi, Advocate, for respondents No.1 and 2.

M/s Anand Sharma & Tarlok Chauhan, Advocates, for respondents No.3 and 4.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. This appeal by the Insurance Company is directed against the award of the Motor Accident Claims Tribunal, whereby the liability for payment of the compensation awarded, under Section 166 of the Motor Vehicles Act, has been fastened upon it.

3. Respondents No. 1 and 2 filed a petition, under Section 166 of the Motor Vehicles Act, seeking award of compensation for the death of Ashok Kumar, who was husband of respondent No.1 and son of respondent No.2. It was alleged that deceased Ashok Kumar was going on a scooter with respondent No.1 when truck No.HP-11-2821, owned by respondent No.3 (Savitri Devi) and being driven by respondent No.4 (Lajja Ram) in a rash or negligent manner, hit the scooter, resulting in the death of

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Whether the reporters of the local papers may be allowed to see the Judgment?

said Ashok Kumar on the spot. The vehicle, at the relevant time, was insured with the appellant for third party risk.

4. Respondents No.3 and 4 admitted that the accident had taken place. They also admitted that the truck was being driven by Lajja Ram respondent No.4. However, they denied that the truck was being driven in a rash or negligent manner. Instead they pleaded that deceased Ashok Kumar was driving the scooter in a rash or negligent manner and the accident occurred because of his rashness or negligence.

5. The appellant, in its reply, pleaded that the truck was being driven not by Lajja Ram, respondent No.4, but by Ranjan Thakur, one of the sons of respondent No.3, the owner of the truck, and that the police had filed the challan, under Section 279 and 304-A IPC, against said Ranjan Thakur. It was stated that said Ranjan Thakur did not possess the license to drive the truck. It was also pleaded by the appellant that Ashok Kumar deceased did not possess a valid and effective driving license.

6. Motor Accident Claims Tribunal framed various issues arising out of the pleadings and thereafter received the evidence adduced by the parties. Ultimately, it was found that truck was being driven by Lajja Ram, respondent No.4, in a rash or negligent manner and because of that the accident had taken place. Consequently, the petition was allowed and the compensation was ordered to be paid by respondent Savitri Devi, in the capacity of the owner, and the present appellant, in its capacity as insurer of third party risk, arising out of the accident of the truck, in question.

7. Appellant is aggrieved by the award in so far as it holds that the truck was being driven by Lajja Ram, who possessed a valid driving license, and that the appellant is liable to satisfy the award.

8. I have heard the learned counsel for the appellant and also examined the record.

9. Submissions made by the learned counsel for the appellant are two-fold. First, that the vehicle was being driven by Ranjan Thakur and not by respondent Lajja Ram and said Ranjan Thakur did not possess any license to drive the vehicle and, thus, there is violation of the condition of the policy that the vehicle will not be driven by a person not possessing a valid driving license and on account of the violation of this condition the appellant is not liable to indemnify the insured. Second submission is that Ashok Kumar deceased did not possess the license to drive scooter and his driving a scooter without license is an act of rashness or negligence and, therefore, the question of the liability of the owner of the truck and consequently that of the appellant does not arise.

10. So far as the first contention is concerned, Lajja Ram, respondent No.4, appeared in the witness box as RW-1 and stated in no uncertain terms that the truck was being driven by him at the relevant time, though he denied that it was being driven rashly or negligently. He was cross-examined on behalf of the claimants. Suggestions were thrown on behalf of the claimants that the witness (Lajja Ram respondent No.4) had been driving the truck very fast and in a negligent manner. The appellant, which was impleaded as respondent No.3 in the petition, not only did not cross-examine Lajja Ram, respondent No.4, but even adopted the cross-examination of Lajja Ram as conducted by the claimants. As already noticed, the claimants threw suggestions to Lajja Ram in his cross-examinations that he was driving the truck in a rash or negligent manner. By adopting this cross-examination, the appellant impliedly admitted not only that the truck was being driven by Lajja Ram but also that it was being driven in a rash or negligent manner.

11. Appellant itself did not lead any evidence suggesting that the truck was, in fact, being driven by Ranjan Thakur, a son of the owner, and not respondent No.4 Lajja Ram, except that it proved the FIR that was

lodged with the police with regard to the accident, copy Ex.RW-2/A, in which the name of the driver is not mentioned, and an extract from the record of the Police Station, Ex. RW-2/A-1, per which challan has been filed against Ranjan Thakur for causing the accident, in question. This evidence is not so weighty as to rebut the unchallenged testimony of respondent No.4 Lajja Ram that it was he who was driving the truck, in question.

12. For the foregoing reasons, the first contention is held to be without merit.

13. The second contention of the appellant is that Ashok Kumar did not possess a license to drive a scooter, though he did possess a license to drive Light Motor Vehicle. Even if it is assumed that Ashok Kumar did not possess a license to drive scooter, that by itself would not mean that Ashok Kumar deceased was guilty of rash or negligent driving of the scooter. Therefore, this contention is also rejected being devoid of merit.

14. For the foregoing reasons, appeal is dismissed.

November 1, 2006(sd) **(Surjit Singh), J.**